



April 7, 2021

VIA EMAIL

Mr. Robert Buettner, Chief
Air Compliance Branch
U.S. Environmental Protection Agency
Region 2 Office
290 Broadway, 21st Floor
New York, New York 10007-1866
buettner.robert@epa.gov

Re: Request for Extension to Information Request No. CAA-02-2021-1458

Dear Mr. Buettner:

Limetree Bay Refining, LLC (“Limetree”) is in receipt of your April 1, 2021 requests for information under Section 114 of the Clean Air Act (“Information Requests”).¹ As you may know, Limetree is in the midst of the critical first few months of operations post restart after a long period of the refinery being idle. In fact, at the moment, the refinery is shut down while we make operational adjustments based on the brief period of operations and we will be restarting the refinery again shortly.

During this time, we need every one of our environmental, health and safety (“EHS”) personnel, including supporting consultants and contractors, to remain entirely focused on supporting our restart efforts and working with our operators to best ensure a safe restart with minimum emissions while simultaneously ensuring compliance with the myriad testing, reporting, recordkeeping, and other tasks that accompany the restart. Therefore, we ask you to reconsider pulling these personnel away from these important tasks to respond to EPA’s Information Requests on an expedited, thirty-day deadline.

We believe that delaying the agency’s Information Requests is better aligned with President Biden’s Executive Order prioritizing environmental justice.² Limetree’s EHS team is currently fully engaged with the restart and is critical to that effort. Redirecting those personnel to respond to the Information Requests in the next 30 days, in the absence of some urgent need for the information requested, is at odds with the Executive Order’s directive to prioritize public health and environmental justice. The refinery is restarting or has restarted almost all of the units that will operate as part of the restart and virtually every monitor, meter, control device, and ancillary piece of equipment is being tested and reports are being prepared and submitted to

¹ The request is also addressed to Limetree Bay Terminals, LLC, but pertains only to refinery operations.

² Exec. Order. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, § 1, 86 Fed. Reg. 7037 (Jan. 20, 2021).

comply with applicable regulations. Therefore, on top of the restart, this is a very intense time for the team in terms of work load in general.

In addition, Section 114 only requires responses within a reasonable time frame. The same is true for EPA's *Best Practices for Compliance and Enforcement-Related Information Requests* ("Best Practices" or "Guidance"),³ which directs EPA to be responsive to reasonable requests for extensions of time to respond. EPA has not identified any urgency for the expedited response requested, such as might exist "during an emergency response or where risk to human health and welfare dictate the immediate need for information."⁴

Accordingly, Limetree respectfully requests that EPA put its Information Requests on hold for 180 days. We believe a 180-day stay is reasonable time to put the Information Requests on hold, but if EPA does have some basis for an expedited response, Limetree requests that EPA identify the specific items that it needs so that we may respond as quickly and efficiently as possible.

Before the end of the 180-day stay, Limetree suggests that we agree on a schedule for production based on EPA's priorities,⁵ but we will need some clarification and possibly corrections to the Information Requests. For example, we have concerns that some of EPA's Information Requests exceed EPA's authority under CAA Section 114, which authorizes information requests for the purpose of determining "whether any person is in violation of" applicable requirements, 42 U.S.C. § 7413(a)(ii). Some of EPA's requests do not appear to fit within that scope, for example:

- EPA has asked for information about anticipated start-up dates for units that are not yet operating. If a unit is not yet operating, it is impossible for the unit to be in violation of any requirement of the Clean Air Act. (Information Request 1).
- EPA has asked for information that is not yet due under the regulations. If a report is not yet due, it is impossible for Limetree to be in violation of the requirement to submit the report. (Information Requests 10 and 11).
- EPA has asked for information about the February 4, 2021 "Flaring Event" but the release that occurred on February 4 was not a "flaring event" regulated under NSPS Subpart Ja or MACT CC (Information Request 2). Flare No. 8 was simply a conduit through which oil and water traveled. Aside from Information Request 3 related to the

³ See Memorandum from Rosemarie Kelley, Director, Office of Civil Enforcement, U.S. EPA, to EPA Regional Counsel, Regional Enforcement Directors and Program Directors, Regional Enforcement Coordinators, and Office of Civil Enforcement Division Directors, Re: *Best Practices for Compliance and Enforcement-Related Information Requests* (Nov. 21, 2018), available at <https://www.epa.gov/sites/production/files/2018-11/documents/bestpracticesforcomplianceandenforcementrelatedinformation.pdf>.

⁴ *Id.* at 7.

⁵ EPA's Best Practices specifically calls for the use of a phased approach to minimize the undue burden on a recipient and to reduce the amount of extraneous information that EPA would receive and process. *Id.* at 4-5.

Risk Management Program, the requests about the release appear to have no relation to investigating whether a violation of applicable CAA requirements occurred.

In addition to potentially exceeding the agency's authority under Section 114, Limetree believes that EPA's Information Requests depart from the agency's Best Practices Guidance in several ways.

- The Guidance directs the agency to request information in the way that is the least burdensome and recommends that EPA obtain the information using the most effective and efficient method, including with the use of informal requests (such as by telephone or email). Asking Limetree to produce information that EPA has already received or will receive in due course under the CAA regulations is unnecessarily burdensome and does not comply with the agency's guidance. (Information Request 5 and 6) In addition, when EPA has sought information informally in the past, Limetree has responded quickly and efficiently. We would ask the agency to consider whether a less formal approach could be used for some of the agency's requests. (Information Request 5)
- The Guidance directs that information requests be tailored to minimize transaction costs while ensuring or improving the government's ability to acquire relevant information. The Guidance specifically calls for the agency to use existing sources of information wherever possible, and to refrain from asking for more information than is necessary, including using a phased approach rather than erring on the side of a broader request.⁶ Many of the items in the Information Requests could be tailored, along the lines suggested in the Guidance, to reduce the burden on Limetree. For example:
 - Information Request 1 requests a very broad scope of information in the context of the restart. Unlike normal operations, the restart necessarily involves multiple periods of varying operations (startup, shutdown, restart) for each process unit. Without further clarification, responding to this request would require a significant amount of time and personnel resources to produce a complete response. We ask that EPA modify this request using a phased approach to identify the information necessary for EPA's purposes, for example, limiting its list to particular units.
 - Information Request 6: With respect to "Accidental Air Releases" and assuming it includes flaring incidents, these reports are included in the company's semi-annual NSPS Subpart Ja reports. In addition, Information Request 5 asks for the Title V semi-annual deviation report, which would include other air releases. Therefore, it appears that regulatory reports could answer all or most of the agency's questions about "Accidental Air Releases."
 - Information Request 7 and 8: We understand this request to ask whether Limetree has fired residual fuel oil in existing residual fuel-consuming units under the FCC

⁶ *Id.* at 4.

PSD permit. If this is correct, the scope of these requests could be tailored to ask just this question.

- Information Request 9: This request asks whether the five SO₂ ambient air monitors are operating. This question has already been asked and answered informally and in the comments on the PAL permit. Therefore, we understand that EPA is asking why Limetree does not believe that it is currently required to operate the monitors, not whether they are operating. If this is correct, the scope of this request could be tailored accordingly.
- Information Requests 10 and 11 request copies of tune-up and energy assessment reports. We understand that EPA wants to know whether tune-ups and energy assessments have been timely completed. EPA could clarify this request and reduce the burden on Limetree of producing all of the reports or ask for a copy of the required Notice of Compliance Status when it is due. In case EPA is not aware, DPNR extended the MACT DDDDD and other related deadlines. Please see attached.

For all of these reasons, Limetree respectfully requests that EPA place the Information Requests on hold for 180 days to ensure that the critical focus on safety and minimizing emissions during restart is not impacted. We believe a 180-day stay is reasonable time to put the Information Requests on hold, but if EPA does have some basis for an expedited response, Limetree requests that EPA identify the information that is needed on an expedited basis and Limetree will do its best to timely respond.

In the interim, we ask that EPA consider withdrawing requests that are outside of its authority under Section 114 or clarify how the Information Requests are related to Clean Air Act compliance, to ensure Limetree understands the agency's questions and is able to provide the most responsive information. Limetree would also appreciate any narrowing of the scope that EPA determines is reasonable. Limetree has also suggested ways to secure the information EPA needs in a less burdensome way. We welcome the opportunity to discuss these issues informally in the "open dialogue" called for in EPA's Best Practices, but would prefer that be delayed until we are past the first critical months of restart.

Thank you for considering these requests. Unless EPA advises otherwise, Limetree will soon need to begin diverting EHS personnel from the restart in order to prepare its responses on the expedited timeframe in the agency's Information Requests. Accordingly, your soonest reply would be appreciated.

Very truly yours,

Robert Weldzius / AEF

Robert Weldzius
Sr. Vice President
Limetree Bay Refining, LLC

Attachment



GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

45 MARS HILL FREDERIKSTED, ST. CROIX, VI 00840

PHONE: (340) 773-1082, FAX: (340) 692-9794

June 24, 2020

Brian K. Lever President and CEO
Limetree Bay Refining, LLC
Limetree Bay Terminals, LLC
1 Estate Hope
Christiansted, VI 00820-5652

Re: Refinery Sector Rule for Compliance Extension

Dear Mr. Lever:

The Department of Planning and Natural Resources (DPNR) has completed its review of your Refinery Sector Rule (RSR) Request for Compliance Extension submitted under the Clean Air Act 112 (i)(3) and your March 9, 2020 requests for compliance extensions to:

- Complete installation of flare monitoring devices in accordance with 40 C.F.R. §63.670;
- Operate CPMS as required by 40 C.F.R. §63.671;
- Comply with pressure release device (PRD) management requirements under 40 C.F.R. §63.648(j)(3)-(7);
- Implement the maintenance vent control measures in accordance with 40 C.F.R. § 63.643(c);
- Complete energy assessment in accordance with 40 C.F.R. § 63.7510(e) and Table 3;
- Complete initial tune-ups in accordance with 40 C.F.R. § 63.7510(e) and §63.7540(a)(10)(i) through (vi), and;
- Conduct sampling and analysis in accordance with 40 C.F.R. § 63.658.

DPNR concurs with each of your requests for extension for the time periods provided in your RSR and March 9, 2020 requests on all matters, except for your request to extend the fence line monitoring under 40 C.F.R. § 63.658. It is our position that this minimally invasive requirement is both an effective and internal means of ensuring Limetree Bay Refining and Terminals operations are conducted within the parameters established for the facility, but that it also safeguards the community it operates in.

If you have any further questions or concerns, please feel free to contact Verline Marcellin, Air Pollution Control, Environmental Program Manager, Division of Environmental Protection at 340- 774-3320 or via email at verlin.marcellin@dpnr.vi.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "JP Oriol".

Jean-Pierre L. Oriol
Commissioner

cc: Austin Callwood, Director, DEP
Verline Marcellin, APC Program